He has a thorough knowledge in reading and calculating building plans, R.C. Structures, bridges, syphons, culverts, piling, etc."

From a first-class construction worker, (pay as such not known) as appears from the above, he joined the appellant company as a cook from 1964 to 1969 at a salary of $180 per month and thereafter as a foreman (see page 18 in answer during cross-examination of Mr. Lim). Of this period, Mr. Lim spoke equally highly of him, thus in letter dated November 23, 1972:—

"Mr. Lee Kim Seng had joined us since 1964. He was sent to M/s Metal Box, Singapore for training as a mechanic and subsequently took over as a foreman in our production line .... We have found him to be very reliable, honest, hard-working and intelligent."

This period of training at Metal Box was not very long — appellants say ten days, respondent four — as a seaming-machine operator. Appellants say now the second testimonial was not true and was given out of sympathy. The cause for the respondent's leaving the company was, according to Mr. Lim, before the court and the Commissioner, his attention to the girl-workers and consequent neglect of his work, as a result of which the respondent was offered the alternative of resigning or stopping his flirting. The judge, in those circumstances, felt the question for determination was whether this pre-occupation with the girls amounted to negligence in his work. He found no evidence of neglect of supervision on the part of the respondent. He went on to observe:—

"A consideration of the work that the defendant was called upon to do is revealing. The factory was said to cover a floor area of 14,000 sq. ft.... In this area were the several units. First, there was the unit for the preparation of the food for canning. The fish would have to be gutted, cut and cleaned. The peas would have to be sorted. Then there was the cooking unit. Next, there was the unit where the cans were filled and the sauces added. After that the cans would be sent to the heating unit where heat was applied to create a vacuum, and then the cans would be sealed. The next step would be to put the cans into the retorts where under temperature and pressure the contents would be sterilised. After that, the cans were left to be cooled. The last process would be the labelling, packing and despatch.

These labours occupied a staff of between 70 to 80. The defendant had the help of an assistant supervisor... though the work was basically performed in several stages, no section head was employed. The defendant would appear to be required to be present at one time at several places, ...

He had to be at the several stages before the lids were put on the cans and the cans sealed to ensure that no insects ever got into the cans. But if he was at the cleaning stage, a fly could, for example, have got into the can at the stage when the cooked food was put into the can.

The food was also said to be deficient both in quality and quantity. To ensure the correct quantity at all times, the defendant would have to be present at all these times to oversee the particular workers charged with the task of loading the cans. If he were to do this, he would of course not be able to be present elsewhere. As for the quality of the foodstuff, no allegation was ever made that the defendant was the person charged with the purchases of the raw materials. But the managing director might be charging the defendant with failure to ensure that in cleaning the food and preparing it for canning, sufficient care was not taken to ensure the elimination of food not suitable or up to the standard for canning. But again the question is the possibility of supervision. And the same question arose over the proper seamings of the cans and the sufficiency of the period of sterilisation in the retorts — both operations in the hands of workers over whom the defendant was required to supervise."

No evidence was adduced from any of the workers in each of the sections who detailed them as to the nature of their duties and the manner of their execution. There was no evidence also that the workers had been directed to obtain instructions from the respondent. On the contrary, Mr. Lim himself said:—

"When there is excess fish we employ the sub-contractors to dress fish for example by picul. These categories of workers are strictly not our employees and they do not appear on our wage register. These workers are ad hoc workers....

I am authorised to employ and dismiss workers. It is within my power to offer each employee the terms and conditions of employment.... I do not allocate the duties of each member of my staff. That is why I employ supervisors. *There were 2 supervisors and one assistant with the company at the material time.*

I arranged the time of work of the factory workers. It is the duty of my supervisors to ensure that my rules are carried out by the employees of the factory. I supervise the supervisors....

I am the one who is running Acme Canning, not Mr. Lee Kim Seng."

Why then like the learned judge, I would ask, should the respondent be solely responsible? Why was not the other supervisor or the assistant made co-defendants? Because they did not flirt with the girls?

The claim is so nebulous and so devoid of merit that it was a blatant attempt to fasten liability for the clear negligence of the workers on the respondent as a result of Mr. Lim's own lack or neglect of supervision. The judge found for a fact that the respondent was "asked to perform more work of supervision than any single individual could reasonably perform. He could simply not supervise all the operations which were carried out simultaneously in different parts of the factory."

The Memorandum of Appeal is equally without substance and I would order that this appeal be dismissed with costs.

Gill C.J. and **Wan Suleiman F.J.** concurred.

Appeal dismissed.

Solicitors: *Ranjit Thomas & Kula; Ariffin & Co.*

TIUN ENG JIN v. WONG SIE KONG

[O.C.J. (B.T.H. Lee J.) November, 18, 1974]
[Kuching — Civil Suit No. K. 74 of 1968]

Contract — Claim of plaintiff for balance of sum of money due from defendant — Accord and Satisfaction — Plaintiff agreeing to receive certain goods and to withdraw the whole matter — Written agreement drafted by plaintiff — Allegation that agreement related to judgment debtor summons and not to whole case — Contra proferentem rule — Equitable estoppel.

The plaintiff had originally on 22.5.1968 brought an action to recover the sum of $73,901.28 with interest and costs. Subsequently after the defendant had filed his defence the plaintiff filed an amended statement of claim for $64,560.24. When the matter came before the court on 18.8.1970 judgment by admission was entered against the defendant for $27,688.70, leaving the balance of $36,871.54. On 12.3.1971 the parties signed an agreement whereby the plaintiff agreed to accept certain goods and articles from the defendant and "agreed to withdraw the whole matter from the court case." Subsequently on 30.1.1972 the plaintiff applied for judgment against the defendant for the balance of $36,871.54.

Held: (1) as in this case the plaintiff had agreed to accept the goods and articles in satisfaction of his claim for money, there had been accord and satisfaction;

(2) the evidence in this case showed that the defendant allowed the plaintiff to transport all the goods and articles mentioned in the agreement from his store and handed the plaintiff the keys of the two vehicles on the faith of the representation and assurance given by the plaintiff that he had agreed to withdraw the whole case from the court and this was in fact acted on;

(3) as the agreement was drafted by the plaintiff, the *contra proferentem* rule must be applied so that the agreement must be construed to refer to the "whole matter" and not to the judgment debtor summons only as alleged by the plaintiff.

Cases referred to:-

(1) *Central London Property Trust Ltd.* v. *High Trees House Ltd.* [1947] 1 K.B. 130.

(2) *Combe* v. *Combe* [1951] 2 K.B. 215.

(3) *Day* v. *McLea* (1880) 22 Q.B.D. 610.

(4) *Edis* v. *Bury* 108 E.R. 511.

CIVIL SUIT.

M. Chan for the plaintiff.

S. Sahathevan for the defendant.

B.T.H. Lee J.: This is an action brought to recover the sum of $36,871.54 which the plaintiff alleged is due from the defendant.

Stated in its barest essentials, the position of the parties is as follows:

On May 22, 1968, the plaintiff commenced an action against the defendant for the recovery of a sum of $73,901.28 together with interest and cost.

On June 19, 1968, the defendant filed a defence, set-off and counterclaim.

Some nine months later that is February 4, 1969, the plaintiff filed an Amended Statement of Claim and sought to claim a sum of $64,560.24 and in due course the defendant filed an Amended Defence and Set-Off.

On the August 18, 1970, the matter came before the court and by admission judgment was entered against the defendant for the sum of $27,688.70 leaving the balance of $36,871.54 which is in dispute and which now forms the subject-matter of the present proceedings before the court.

On the date of hearing on January 30, 1972 counsel for defendant applied for and obtained a discharge as he had received no further instructions from the defendant who had apparently changed his address without informing his counsel of such change.

Counsel for the plaintiff thereupon applied for and obtained judgment against defendant for the balance of $36,871.54.

Prior to the events of January 30, 1972, the plaintiff and defendant executed an agreement dated March 12, 1971, the contents of which are as follows: —

"Agreement

This agreement is made between Mr. Wong Sie Kong of 4th mile of Pennerissen Road, Kuching and Mr. Teo Eng Jin of Lane 3 Padungan Road, Kuching.

I, Wong Sie Kong has agreed sold the following goods to Mr. Teo Eng Jin at the cost of $13,000.00.

2 Large Cold Room (with engine complete)
10 Freezer (with engine complete)
2 Italy made Slicing Machines
1 Victor Electric adding machines
1 Olivetti Electric adding machines
1 Olivetti Electric Typewriter (at Kong Ming Bank Ltd.)
1 Ford Tham Pick up lorry
1 Galaxie Motor Car in Sibu garage.

Mr. Teo Eng Jin has agreed to with draw the whole matter from the court case which is consent by the both party.
Date 12th March 1971.

Signed by: Wong Sie Kong
Teo Eng Jin."

Counsel for the defendant applied for and obtained an amendment, which was not objected to by the plaintiff, of the pleadings by adding another paragraph numbered 4A as follows:

"The defendant will further contend that on the 12th of March, 1971, the plaintiff and the defendant had executed an agreement in writing whereby in consideration of the defendant handing over certain goods to the plaintiff, the plaintiff was to withdraw all legal proceedings instituted by him against the defendant and pending hearing and the defendant is therefore released from any further payments to the plaintiff as there has been accord and satisfaction."

Those briefly are the facts.

On behalf of the plaintiff it was contended that the agreement (Exhibit P1) was prepared and typed by the defendant himself. The last paragraph meant that the said judgment debtor summons and not the whole court case would be withdrawn in consideration of the defendant delivering to the plaintiff the various items set out in the agreement.

The next point taken was that the defendant had failed to deliver to the plaintiff the last two items namely the two motor vehicles, and that constituted a breach of the agreement. In other words there was no accord and satisfaction.

The defendant, on the contrary claimed that there was a breach of the agreement on the part of the plaintiff, the plaintiff and the defendant having executed an agreement whereby in consideration of the defendant handing over certain goods to the plaintiff which he claimed he did, the latter agreed to withdraw all legal proceedings instituted by him against the defendant.

In that state of circumstances the question raised largely turned on the true construction and effect of the agreement dated March 12, 1971.

At this point it is necessary to refer in some detail to the evidence of both the plaintiff and the defendant.

Tiun Eng Jin, the plaintiff in giving evidence admitted that he entered into the agreement (Exhibit P1). The defendant according to him brought pressure to bear on him and forced him to sign the agreement. He added the defendant refused to hand over the items mentioned in the agreement, unless he signed the agreement.

Prominent amongst the allegations is that the last two items, namely the two motor vehicles were not delivered to him. He had in the meantime accepted the other items and sold them.

In cross-examination he said the defendant did not hand him the ignition keys to the vehicles. Nor did he ask him to collect them from the garage.

It seems to me important to bear in mind that the plaintiff had taken no steps to repudiate the agree-

ment and there is not a word of complaint from him. Nor in the event did he seek legal advice about the non-delivery of the cars.

He agreed he collected the items for which he got a receipt from the defendant before he signed the agreement.

The receipt was dated February 12, 1971 (Ex. P2), the translation of which is as follows:

"The two big cold rooms, other old freezers and tin stuffs in the store room at Batu Kawa Road are handed over to Mr. Teo Eng Jin.

Signed: Wong Sie Kong
Teo Eng Jin
17.2.1971."

The evidence went to show that both the plaintiff and the defendant jointly entered into an army contract business. The defendant however had fallen on hard times largely as a result of the depression caused by the abrupt cessation of confrontation. Being in want of funds he borrowed from the plaintiff. He was however unable to repay the loan and the plaintiff commenced an action against him.

I should add that in reference to the contract business the defendant had some stock in trade left over in his business.

There was in consequence an arrangement by which the defendant agreed to sell the goods mentioned in the agreement (Exhibit P1) at a price of $13,000 a figure fixed by the plaintiff.

The agreement was drafted and he, the defendant, typed out the contents as dictated by the plaintiff.

The terms of the last paragraph as to which there is a dispute reads as follows:

"Mr. Teo Eng Jin has agreed to with draw the whole matter from the court case which is consent by the both party."

He said the plaintiff knew English and he conversed with the Army officers in English.

Thus far the matters stood.

It is perhaps relevant at this stage to note that Bankruptcy proceedings were commenced against the defendant by one of the creditors sometime in 1967 or 1968.

The court has traced a Bankruptcy Notice No. 1 of 1970 taken out by one of the creditors against the defendant and the Notice was dated July 20, 1970.

The Creditors' Petition was however withdrawn on September 11, 1970, as a result of a scheme of arrangement entered into between that creditor and the defendant.

It is convenient at this stage that we should address ourselves to the principles which should guide a court in such a matter.

The legal position in such cases is stated by *Chitty* on Contracts, 23rd Edition, Paragraph 1224 at page 575 as follows:

"Payment of part of a debt

Where there is a claim for a liquidated sum, the liability for which is not in dispute, the acceptance of a smaller sum in satisfaction does not relieve the debtor for there is no consideration for the creditor's abandonment of the balance. This rule, which is generally known as the rule in *Pinnel's* case, is nevertheless subject to a number of qualifications.

A debt may be discharged by the acceptance of something different in nature from part payment of the debt, such as 'a horse, or a canary, or a tomtit', for then there is accord and satisfaction. Even if the satisfaction accepted is much less in value than the debt, it will constitute a good discharge. since he courts will not inquire into the adequacy of consideration. Also payment by a debtor at an earlier time or in a different place from that required by the original contract, if made at the request of the creditor, will effect a discharge.

Other qualifications relate to satisfaction by a third party, compositions with creditors and the *High Trees* principle."

From the above it is clear that a debt may be discharged by the acceptance of something different in nature from part payment of the debt, such as "a horse, or a canary, or a tomtit," for then there is accord and satisfaction.

We have the situation in the agreement (Ex. P1) where it is expressed:

"I, Wong Sie Kong has agreed sold the following goods to Mr. Teo Eng Jin...."

and enumerating eight items beginning with "(a) 2 Large Cold Room (with engine complete)" and ending with "(b) 1 Galaxie Motor Car in Sibu garage."

The plaintiff has accepted something different in nature as the eight items amply prove, notwithstanding it is accompanied by the words "at the cost of $13,000." There is, in my view accord and satisfaction.

The other exception to the rule relates to the *High Trees* principle.

In the case of *Central London Property Trust Ltd.* v. *High Trees House Ltd.*,[1] Lord Denning held that a promise intended to be binding, intended to be acted on and in fact acted on, is binding so far as its terms properly apply. The headnote reads:

"That where parties enter into an arrangement which is intended to create legal relations between them and in pursuance of such arrangement one party makes a promise to the other which he knows will be acted on and which is in fact acted on by the promisee, the court will treat the promise as binding on the promisor to the extent that it will not allow him to act inconsistently with it even although the promise may not be supported by consideration in the strict sense and the effect of the arrangement made is to vary the terms of a contract under seal by one of less value."

Similarly, in the case of *Combe* v. *Combe*,[2] Lord Denning said at page 220:

"The principle, as I understand it, is that, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, the one who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relations as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he himself has so introduced, even though it is not supported in point of law by any consideration but only by his word."

and further down at page 225 Asquith L.J. said:

"What that case decides is that when a promise is given which (1) is intended to create legal relations, (2) is intended to be acted upon by the promise, and (3) is in fact so acted upon, the promisor cannot bring an action against the promisee which involves the repudiation of his promise or is inconsistent with it."

The legal position is also set out in *Halsbury's* Laws of England, Vol. 8, 3rd Edn. at page 113 Paragraph 197:

"*Nudum pactum*

It seems that where a promise is given without consideration but is intended by the promisor to affect an existing contract between him and the promisee, and is intended to be acted upon by the promisee, and is in fact so acted upon, such a promise may be set up as a defence by the promisee in an action by the promisor to enforce the original contract: but it cannot be sued on as a separate cause of action by the promisee." (See *Central London Property Trust Ltd.* v. *High Trees House Ltd.* [1947] K.B. 130 as explained in *Combe* v. *Combe* [1951] 2 K.B. 215, C.A.; *Robertson* v. *Minister of Pensions* [1949] 1 K.B. 227).

In *Day and McLea*[3] at page 613 Bowen L.J. in his judgment said that as a matter of principle as well as of authority the question whether there is an accord and satisfaction is one of fact.

Applying the principles set out there is no doubt in my view and I am satisfied upon all the evidence that the defendant allowed the plaintiff to transport all the items mentioned in the Agreement from his store, and handed the plaintiff the ignition keys of the two motor vehicles on the faith of the representation and assurance given by the plaintiff that he had agreed to withdraw the whole case from the court and was in fact acted upon and which I hold and so find.

With that I must turn now to the matter in dispute. It was in evidence that the plaintiff used a large truck to transport the goods from his store before the agreement was signed.

In cross-examination of the defendant the plaintiff remembered the number of one vehicle as KA 1233. It was not written in the agreement.

One was in Kuching repair shop and the Galaxie motor car was kept in Sibu.

The plaintiff knew where the cars were kept.

For reasons of which the defendant was unaware the plaintiff now seeks to allege that he had not collected the vehicles notwithstanding he the defendant had delivered the keys to him pursuant to the agreement.

The other creditors according to him were prepared to release him from the unpaid debts, but the plaintiff refused to do so.

The cold room mentioned in the agreement according to him was worth $90,000 but the plaintiff instructed him to put down the figure as $13,000 in the agreement, which he did.

That being the facts and that being the position the question to be determined is in my view not whether there has been an actual handing over of the goods manually, but whether, looking at all the surrounding circumstances of the case and looking particularly at the nature and character of the goods listed out in the agreement there has or has not been a clear intention expressed on the part of the defendant to give and a clear intention on the part of the plaintiff to receive and act upon such an arrangement.

Now I feel no doubt that the plaintiff by a course of conduct so conducted himself that the court may reasonably act upon the belief that he had received the ignition keys of the two motor vehicles of which the defendant claimed he had handed them to him.

The plaintiff's whole conduct from the moment he got a big truck and labourers to transport the goods of the defendant from the store, which occupied more than one day and obtaining from the defendant a receipt and after an interval of about one month — entering into an agreement which he dictated and signed, points to nothing but that he had thought out everything to the minutest detail, regard being had particularly to the last paragraph of the agreement.

I have not the slightest doubt that the agreement was signed after the plaintiff had completely satisfied himself after he had collected all the items mentioned in the agreement, including the two cars, the number of one of which he knew namely KA 1233.

It is to be observed as urged by counsel for the defendant that there was up to the date of the claim for the balance sometime in April 1972 no express repudiation on the plaintiff's part or conduct which amounted to repudiation of the agreement.

The plaintiff has as it seems to me affirmed the agreement as it stands expressed and in the sense in which it is construed by this court and with which I will refer more fully hereafter.

The question then arises, why then bring this action.

The truth of the matter is that the plaintiff seems to have repented of his action, and hardened his heart. That being so he is by the present proceedings seeking a means of escape from the provisions of the agreement.

He took the precaution as the evidence has established of collecting all the goods except, according to him the two motor vehicles sometime before he signed the agreement.

It must here be observed that the Receipt (Ex. P2) was signed on February 17, 1971, that is about one month before the agreement (Ex. P1) was signed, namely March, 12, 1971.

It seems to me to be an interesting fact that the plaintiff said that after he had collected the goods he got the Receipt (Ex. P2) from the defendant to safeguard himself as he claimed against a possible charge of theft on the part of defendant. As already pointed out plaintiff had all along acted with extreme caution.

Taking all the circumstances of the case together the probability is that the plaintiff had apart from the other goods received the two sets of ignition keys to both cars, had collected the two motor vehicles from the garages sometime between February 17, 1971 (the date of the Receipt Ex. P2) and the agreement dated March 12, 1971, an interval of about one month.

If the plaintiff had not taken delivery of the two motor vehicles it is in my view extremely unlikely that he would have signed the agreement. He is, in my judgment too astute for that.

Although the agreement may not be in the form such as would be used by skilled conveyancers its language is clear and I have no doubt as to its meaning and effect.

The words "withdraw the whole matter from the court" in my opinion admit of no ambiguity. They mean precisely what it intends to convey.

It is pretty obvious that the plaintiff was quite happy with the transaction, and had signed the agreement the last paragraph of which says in clear form, though not couched in good conveyancing language:

"Mr. Teo Eng Jin has agreed to with draw the whole matter from the court case which is consent of the both party."

Had the plaintiff desired to limit himself to the debt in the summons which he now claims rather than the whole matter — nothing would have been easier than to insert the appropriate words.

However even if there was any ambiguity, the rule of construction is this: It "is a general rule that the words in a deed are to be construed most strongly 'contra proferentem' ". As was stated by Holroyd J. at page 512 in *Edis* v. *Bury*: [4]

"... if there be any ambiguity in the words of this instrument, they ought to be construed favourable for the plaintiff, and against the defendant, who made the instrument."

In the circumstances holding as I do that the plaintiff was the author and draftsman of the agreement I am of opinion that the agreement speaks of the "whole matter" and not of the judgment debtor summons only as was alleged by the plaintiff.

I must here point out that I have observed the plaintiff giving evidence, and that he understands the English language quite well. He has throughout the proceedings answered questions put by counsel even before the court interpreter completed his interpretation. When he was questioned about the cars, he was about to blurt out something. However he thought better of it and checked himself in time probably realising his own interest in the present case may be jeopardised by what he was about to say and merely said he did not receive the keys.

The plaintiff must, as it seems to me elect to take the step he had taken in order to steal a march over the other creditors or in the alternative sue the defendant for the entire sum and accept the risk of a division of the debtor's property amongst his creditors.

The defendant gave his evidence as it seems to me in a straightforward manner and I consider him to be an honest and truthful witness and I accept his evidence.

The evidence leaves no doubt on my mind on the basis of credibility and probabilities of the case that the plaintiff intended to contract on the basis as contended by the defendant.

It was he who dictated the terms of the agreement and I so find.

For one or more or all of the reasons given above the plaintiff's claim is accordingly dismissed with costs.

Claim dismissed.

Solicitors: *Chan, Jugah, Wan Ullok & Co.; Battenberg & Talma.*

JOSEPH v. GOVERNMENT OF SARAWAK & ANOR.

[O.C.J. (Yusoff J.) January 15, 1975]
[Kuching — Civil Suit No. K 264 of 1972]

Administrative Law — Action of tort against Government — Allegation of malicious falsehood against head of department — Whether claim comes within the Public Authorities Protection Ordinance, 1948.

Practice and Procedure — Application to set aside writ as frivolous and vexatious — R.S.C., 1957, O. 25 r. 4.

In this case the plaintiff had been employed as Senior Technical Assistant in the Public Works Department. In 1969 his head of department, the second defendant, purported to transfer him to the Kuching Water Board, stating falsely in a memorandum that the plaintiff had agreed to the transfer. When the plaintiff requested for a copy of the option alleged to be exercised by him the second defendant, purportedly terminated the plaintiff's services with the Board. In an action in the High Court the plaintiff obtained a consent order declaring that he was and had been at all material times a servant of the Government of the Sarawak. Following that suit, the plaintiff instituted this action claiming *inter alia* damages for malicious falsehood. The defendants thereupon applied by motion to strike out the writ of summons and set aside all subsequent proceedings on the ground that the statement of claim disclosed no reasonable cause of action, it was frivolous and vexatious and that the proceedings were an abuse of the process of the court. It was contended that the claim was statute barred by the Public Authorities Protection Ordinance, 1948 as it was not instituted within twelve months of the alleged act, neglect or default.

Held: (1) in this case there was no suggestion that the second defendant had acted in the exercise of his public duty or authority when he wrote the memorandum concerned. The second defendant had not in the circumstances acted in exercise of his public duty or authority so as to entitle him to the protection of the Public Authorities Protection Ordinance, 1948;

(2) the statement of claim in this case raised triable issues and it could not therefore be said that the writ was frivolous or vexatious.

Cases referred to:-

(1) *Government of Malaysia* v. *Lee Hock Ning* [1973] 2 M.L.J. 51.

(2) *McManus* v. *Borves & Ors.* [1938] 1 K.B. 98.

(3) *Compton* v. *West Ham Borough Council* [1939] 1 Ch. 771.

(4) *Bradford Corporation* v. *Myers* [1916] A.C. 242.

(5) *Duchy of Lancaster* v. *London and North Western Railway* [1892] 3 Ch. 274.

(6) *Tio Chee Hing* v. *Tractors Malaysia Bhd.* [1973] 1 M.L.J. 66.

CIVIL SUIT.

T. O. Thomas for the plaintiff.

Denis Ong Jiew Fook (Asst. State Attorney-General) for the respondents.

Yusoff J.: This is a motion taken out by the defendants, the Government of Sarawak and Ng Siak Khee, the Director of Public Works Department, Sarawak, as second defendant to strike out the Writ of Summons and set aside all subsequent proceedings in an action filed against them by the plaintiff for malicious falsehood and declarations of rights, on the grounds that the statement of claim discloses no reasonable cause of action; it is frivolous and vexatious; and that the proceedings are an abuse of the process of the court.